

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC., : Civil Action No.
vs. : 3:09CV620
LAWSON SOFTWARE, INC. : May 11, 2010

COMPLETE TRANSCRIPT OF THE CONFERENCE CALL
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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P R O C E E D I N G S

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THE COURT: Hello.

MR. MERRITT: Yes, Judge Payne, we're on.

THE COURT: Okay. Who do you have here? This is ePlus against Lawson.

MR. MERRITT: This is Craig Merritt for ePlus.

THE COURT: Anybody there for Lawson?

MR. CARR: Yes, Judge. Hi, this is Dabney Carr for Lawson, and also on the line is Dan McDonald.

MR. ROBERTSON: Scott Robertson for ePlus, Your Honor.

THE COURT: Okay. Now, you all have gotten a claim construction, and you all have revised your or got extensions to do your expert reports. So they are now in each other's hands; is that right?

MR. McDONALD: That's right.

THE COURT: Please give your name when you speak.

MR. McDONALD: That was Dan McDonald, Your Honor.

THE COURT: That's going to be in the future. Now, I'd like to know, folks, don't you want to sit down and go talk with, is it Judge Dohnal who's been assigned?

MR. ROBERTSON: Scott Robertson, yes, sir.

THE COURT: Don't you want to sit down and see if you can't go settle this case?

35:18PM 1 MR. ROBERTSON: We'd be happy to do so, Your Honor,
35:20PM 2 as plaintiff.

35:20PM 3 THE COURT: Isn't it about time for you all to start
35:22PM 4 doing that? You kind of are in a position to assess each
35:26PM 5 other's strengths and weaknesses in a way that you weren't
35:30PM 6 before now that you have the expert reports and the claim
35:32PM 7 construction opinion. How about you, Mr. McDonald?

35:36PM 8 MR. McDONALD: I think my client would be willing to
35:38PM 9 get together to talk about things, Your Honor. I don't know
35:42PM 10 that it was necessarily a dramatic shift in things to get the
35:46PM 11 decision the way it came down, but we certainly could talk
35:50PM 12 about it, and you are right, we do have more information now.

35:52PM 13 THE COURT: The way I see it, I may be wrong, is that
35:56PM 14 both of you have got some problems in the case, and both are
35:58PM 15 going to have to end up recognizing that it could be a long
36:02PM 16 haul for you, and it's probably better off for you to settle
36:06PM 17 the case, but I want you to get with Judge Dohnal and get on it
36:08PM 18 as soon as you can. What do we have coming up? I don't have
36:16PM 19 the detailed schedule in front of me. I should have gotten it,
36:20PM 20 but I didn't.

36:20PM 21 MR. ROBERTSON: One thing, Your Honor, I wanted to
36:22PM 22 just alert the Court of, and that is on May 24th, both CEOs of
36:30PM 23 the company are being deposed in my office, my CEO in the
36:34PM 24 morning and Lawson's CEO in the afternoon, and we got a
36:40PM 25 communication that perhaps that might be an opportunity for

36:42PM 1 them to sit down and have a candid exchange. I think that's a
36:46PM 2 good suggestion.

36:48PM 3 Perhaps that should happen before we go back to see
36:50PM 4 Judge Dohnal, but the plaintiff would be happy to meet with
36:54PM 5 Judge Dohnal at any time the Court directs. But as far as
36:58PM 6 timing goes, that might be more productive.

37:00PM 7 THE COURT: I'm going to let you all raise that with
37:04PM 8 Judge Dohnal, and you all can have your discussions, and since
37:06PM 9 he's managing the settlement process -- it sounds logical to
37:10PM 10 me, but he may have a different approach to it than I would.
37:14PM 11 So you all check it out with him, but my guess is he'll
37:16PM 12 probably agree with you. But I'll tell him today that I'm
37:22PM 13 asking you all to contact him and see if you can't work out the
37:26PM 14 case.

37:28PM 15 Now, do you all see at this juncture that the length
37:34PM 16 of the trial will be any different than you currently
37:36PM 17 forecasted?

37:40PM 18 MR. McDONALD: I don't see a change in that, Your
37:44PM 19 Honor. This is McDonald for Lawson speaking.

37:48PM 20 MR. ROBERTSON: Your Honor, this is Mr. Robertson.
37:52PM 21 I'm a little concerned at the number of third-party witnesses,
37:54PM 22 as the Court knows, that have been identified late in the case.
37:58PM 23 We're struggling to get those depositions done. I mean, I
38:02PM 24 count anywhere between 18 to 20 depositions we need to do in
38:06PM 25 short order.

38:06PM 1 One of the things the parties have been discussing is
38:08PM 2 a modest adjustment of Your Honor's scheduling order, and we
38:14PM 3 think we've come to agreement on that. It doesn't impact the
38:18PM 4 Court at all as far as any of the deadlines for briefings or
38:20PM 5 summary judgment or the trial date certainly. It's just sort
38:24PM 6 of something the parties need to absorb into their schedule,
38:28PM 7 and as I say, we have met and conferred, we agreed upon it, and
38:32PM 8 the suggestion was we submit a revised scheduling order
38:36PM 9 adjusting those dates.

38:36PM 10 Mr. Carr circulated something yesterday, and we
38:38PM 11 confirmed that the dates were accurate. So that's sort of just
38:42PM 12 a ministerial matter, but it's necessary to sort of accommodate
38:46PM 13 these additional witnesses that have been identified, and,
38:50PM 14 perhaps, any rebuttal witnesses.

38:54PM 15 MR. CARR: Judge, this is Dabney Carr. If you want
38:54PM 16 me to, I can be specific about the extensions, read them off to
39:00PM 17 you that we all have discussed and agreed to amongst ourselves.

39:02PM 18 THE COURT: Is it going to affect the dates for
39:04PM 19 filing summary judgments?

39:06PM 20 MR. CARR: No. They are just to extend the days to
39:10PM 21 take some remaining fact witness depositions, extending the
39:12PM 22 date by six days for ePlus to serve its responsive expert
39:18PM 23 report on invalidity and extending the date by five days to
39:22PM 24 take expert depositions.

39:26PM 25 THE COURT: What did you call that, a modest

39:28PM 1 proposal? Isn't there a rather well-known book by that name?

39:32PM 2 MR. MERRITT: This is Merritt, Your Honor. I believe
39:34PM 3 the important point is it's a modest proposal that doesn't
39:36PM 4 affect your life.

39:38PM 5 THE COURT: Well, I'll tell you what. What does
39:44PM 6 bother me, frankly, is hearing about all these third-party
39:46PM 7 witnesses and what that might do to the trial. And I don't
39:52PM 8 know how this all came to pass, but the dimensions of a trial
39:56PM 9 with 18 or X witnesses in it was not, I think, what we -- third
10:02PM 10 party witnesses was not what was being discussed originally.

10:08PM 11 MR. McDONALD: I don't think the number is going to
10:10PM 12 be quite that bad, Your Honor. Some of these people are just
10:12PM 13 cleaning up with the Lawson and ePlus, concluding 30(b)(6)
10:16PM 14 depositions and the CEO depositions that you heard mentioned.
10:18PM 15 A lot of these are going to be relatively short. There was one
10:20PM 16 today that I don't even know lasted one hour.

10:22PM 17 THE COURT: Okay.

10:24PM 18 MR. McDONALD: So that's why I say I don't think it's
10:26PM 19 going to change the length of things.

10:30PM 20 MR. ROBERTSON: I was on that deposition. It went
10:30PM 21 two and a half hours, but, Your Honor, I'm very concerned.
10:34PM 22 There are a number of third-party witnesses, and I think
10:36PM 23 they're all consultants of Lawson, and they're all being
10:40PM 24 paid, and they're all going to be called as trial witnesses,
10:42PM 25 so, yes, Your Honor's question is very apt and astute. I think

10:46PM 1 it may have an impact on the length of the trial.

10:50PM 2 THE COURT: I guess I'll just deal with that when you
10:52PM 3 all get it sorted out and see what they are and what it is
10:54PM 4 going to do, but if you think it's going to affect the trial
11:00PM 5 and the length of it, you're going to have to fish or cut bait
11:02PM 6 real soon, folks, and I need to know and understand what the
11:06PM 7 dimensions of the problem are, because I don't have but so much
11:10PM 8 time in the schedule, and on that issue, I do have some
11:18PM 9 concerns. So I'll let you all sort all that out, and you can
11:22PM 10 figure out how to bring it before me when it is appropriate.
11:26PM 11 All right.

11:26PM 12 UNIDENTIFIED SPEAKER: Yes, sir.

11:26PM 13 THE COURT: And in the meantime, go see if you can't
11:30PM 14 make some modest progress towards settlement. Thank you.

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16 (End of proceedings.)

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19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above-entitled matter.

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23 /s/
24 P. E. Peterson, RPR

Date

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